



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TEXAS ORTHOPEDIC HOSPITAL
C/O HOLLOWAY & GUMBERT
3701 KIRBY DRIVE STE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box
#50

MFDR Date Received

DECEMBER 3, 2007

Respondent Name

TPCIGA FOR RELIANCE NATIONAL INSURANCE

MFDR Tracking Number

M4-08-2284-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary November 30, 2007: "Texas Orthopedic Hospital billed its usual and customary charges for its services. The total sum billed was \$67,470.62...The claim presented by Texas Orthopedic Hospital was billed in the same manner and at the same rates that it would bill any health plan or insurer... Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...the fees paid by Crawford & Company on behalf of Dow Chemical Company do not conform to the reimbursement section of rule 134.401...it is the position of Texas Orthopedic Hospital that all charges relating to the admission of [Claimant] are due and payable as provided for under Texas law and the Rules of the Division, as currently adopted and published at 28 TAC §134.400 *et seq.*".

Amount in Dispute: \$39,865.07

RESPONDENT'S POSITION SUMMARY

Respondent's Supplemental Position Summary Dated January 23, 2008: "This is a dispute over the amount of reimbursement owed under the Acute Care Inpatient Hospital Fee Guideline (ACIHFG). According to the Provider's Table of Disputed Services, Provider seeks additional reimbursement of \$39,865.07 for inpatient hospital facility charges for dates of service from December 12, 2006 through December 15, 2006...Provider asserts that it is entitled to reimbursement under the stop-loss exception. Carrier asserts that reimbursement should be pursuant to the standard per diem method...Reimbursement in this case should be pursuant to the standard per diem plus carve-outs reimbursement method. There is no evidence that the claimant had any co-morbidities that resulted in the need for unusually extensive and costly services. There is no evidence that any complications arose either during or after the surgery that resulted in the need for unusually extensive and costly services. There is simply no evidence that would justify application of the stop-loss exception. However, even if the stop-loss exception were otherwise applicable to this case, the stop-loss provisions of the guideline, as interpreted by Provider, are invalid for the reasons stated..."

Response Submitted by: Stone, Loughlin & Swanson, LLP

Respondent's Supplemental Position Summary Dated September 13, 2011: "Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Texas Administrative Code §134.401 (repealed)..."

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
December 12, 2006 through December 15, 2006	Inpatient Hospital Services	\$39,865.07	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
 - Effective July 13, 2008, the Division's rule at former 28 Texas Administrative Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: "Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008." 33 *Texas Register* 5319, 5220 (July 4, 2008).
 - Former 28 Texas Administrative Code § 134.401(a)(1) specified, in pertinent part: "This guidelines shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers' Compensation Act." 22 *Texas Register* 6264, 6306 (July 4, 1997).
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- P8F – THIS CONTRACTED PROVIDER OR HOSPITAL HAS AGREED TO REDUCE THIS CHARGE BELOW FEE SCHEDULE OR USUAL AND CUSTOMARY CHARGES FOR YOUR BUSINESS.
- ANSI - 24.
- X0N – PAYMENT FOR THIS CHARGE IS NOT RECOMMENDED WITHOUT DOCUMENTATION OF COST. (X023) ANSI-16
- ZG9 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE HEALTH FACILITY FEE SCHEDULE ASSIGNED BY THE TEXAS WORKERS COMPENSATION COMMISSION. (Z686) ANSI - 42
- ZI4 – RECOMMENDATION OF PAYMENT HAS BEEN BASED ON THIS PROCEDURE CODE WHICH BEST DESCRIBES SERVICES RENDERED. (Z652) ANSI - 150
- ZJB – THE CHARGES FOR THE HOSPITALIZATION HAVE BEEN REDUCED BASED ON THE FEE SCHEDULE ALLOWANCE. (Z696) ANSI – W1
- ZJQ – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE. (Z710)
- ZLG – THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE. (Z772) ANSI – W1
- W1 – Workers Compensation State Fee Schedule Adjustment
- 160 – Payment adjusted because the payer deems the information submitted does not support this level of service.
- 16 – Claim/service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remarks codes whenever appropriate.
- 24 – Payment for charges adjusted. Charges are covered under a capitation agreement/managed care plan.
- 42 – Charges exceed our fee schedule or maximum allowable amount.
- W3 – Additional payment made on appeal/reconsideration.
- W4 – No additional reimbursement allowed after review of appeal/reconsideration.
- B13 – Previously paid. Payment for this claim/service may have been provided in a previous payment.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$67,470.62. The Division concludes that the total audited charges exceed \$40,000.
2. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services" and further states that "...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor in its position statement states that "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%." This statement does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
3. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. The requestor's position statement does not address how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar surgical services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).

4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was three days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of three days results in an allowable amount of \$3,354.00.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Description of Implant per Itemized Statement	Units	Cost Per Unit	Cost + 10%
ACUDRIVER	1	No support for cost/invoice	\$0.00
DEPUY TAPER CEM STEM	1	No support for cost/invoice	\$0.00
DEPUY LCS RP INSERT	1	No support for cost/invoice	\$0.00
DEPUY MBP POROUS TRAY	1	No support for cost/invoice	\$0.00
DEPUY REVISION CEMENT	1	No support for cost/invoice	\$0.00
DEPUY LCS M/B PATELLA	1	No support for cost/invoice	\$0.00
BONE PLUG W ACCSY	1	No support for cost/invoice	\$0.00
CEMENT SIMPLEX	2	No support for cost/invoice	\$0.00
BNE CHP 30 C 4-10 10015	1	\$398.00	\$437.80
BNE FEM XSEC 34M 10045	1	No support for cost/invoice	\$0.00
BONE CNC CRUSH 15C	2	No support for cost/invoice	\$0.00
		TOTAL DUE: \$437.80	

- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$395.67/unit for Ropivacaine 0.2% 200ML. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$3,791.80. The respondent issued payment in the amount of \$10,737.89. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1), titled *Standard Per Diem Amount*, and §134.401(c)(4), titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$0.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	04/30/2013 _____ Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.